



Comptroller General
of the United States

75498

Washington, D.C. 20548

Decision

Matter of: Precision Elevator Company, Inc.

File: B-261041; B-261041.2

Date: August 9, 1995

Theodore M. Bailey, Esq., for the protester.
Emily C. Hewitt, Esq., and Scarlett D. Orenstein, Esq.,
General Services Administration, for the agency.
Susan K. McAuliffe, Esq., and Michael R. Golden, Esq.,
Office of the General Counsel, GAO, participated in the
preparation of the decision.

DIGEST

Protest that agency improperly modified contract to add elevator maintenance services for adjoining building is denied where, even if there was some deficiency in the modification, protester has not shown that it was prejudiced by the deficiency.

DECISION

Precision Elevator Company, Inc. protests the modification of contract No. GS-07P-94-HUC-0001, awarded by the General Services Administration (GSA) to Dover Elevator Company for the modernization and maintenance of 14 elevators located at 1100 Commerce Street, Dallas, Texas. Precision contends that the modification, which adds to Dover's contract the provision of maintenance services for seven elevators located in an adjoining building at 1114 Commerce Street, is improper because it is beyond the scope of the original contract.

We deny the protest.

In 1989, Precision was awarded a single contract (No. GS-07P-88-HTC-0141) for the provision of elevator maintenance services at the 1100 and 1114 Commerce Street buildings (the solicitation had permitted the agency to award either one contract or separate contracts for the two buildings). The two buildings are connected. Upon completion of the contract's base period in 1992, GSA exercised the first 36-month option period under Precision's contract to extend the services through March 31, 1995. On May 4, 1994, GSA awarded the current contract to Dover for the modernization and full maintenance of the 14 elevators in the 1100

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building. The protester's elevator maintenance services contract was modified on October 13, 1994, to delete the elevators at the 1100 building. Deletion of those elevators from Precision's contract represented a 73.4-percent decrease in the scope of work of the original contract; subsequently, the agency decided not to exercise the final 36-month option available under Precision's contract.

In November, due to customer safety and maintenance response concerns, GSA sought to add to Dover's contract a requirement for an on-site, full-time elevator maintenance technician at the 1100 building. Dover submitted a price proposal for the addition of the technician which, the agency states, was considered fair and reasonable. During communications with Dover regarding the adjustment of the firm's contract to include the on-site technician, Dover submitted an unsolicited alternate proposal to provide maintenance services for the seven elevators in the adjoining 1114 building at no additional cost to the government.¹ Dover based its proposal on the fact that the two buildings are connected and that the 14 elevators at the 1100 building would not constitute a full work load for the new full-time technician to elevators. On April 18, 1995, the agency issued a written modification to Dover's contract to add the provision of the on-site, full-time maintenance technician for the period of April 1 through December 31, 1995, at a cost of \$7,700 per month. Dover's contract was also modified to provide full maintenance services for the seven elevators at the 1114 building for the same period, April 1 through December 31, 1995, at no additional cost to the government. This protest followed.²

Precision contends the addition of the 1114 building elevator maintenance services is outside the scope of

¹On October 27, GSA had published in the Commerce Business Daily (CBD) a notice of its intended procurement of elevator maintenance services for the 1114 building; on December 27, a notice appeared in the CBD announcing the agency's cancellation of the October 27 CBD notice.

²Prior to the modification of Dover's contract, the agency prepared a written justification of the modification on the basis of urgency. During the protest, the agency added a written justification for the modification on the basis that no other offeror could be expected to offer the services at no cost to the government. The agency states that it is planning to compete its future requirement for the 1114 building elevator maintenance services to commence immediately after the completion of the relatively short period of performance stated in the modification to Dover's contract.

Dover's original contract and should be separately competed.³ The agency contends that the addition of the 1114 building elevators is within the scope of Dover's contract and that, even if it is not, the award to Dover is proper because no other firm could be expected to compete for the services at no cost to the government. The agency states that it would have modified Dover's contract to include the full-time maintenance technician at the 1100 building in the amount of \$7,700 per month proposed by Dover regardless of whether Dover also was to service the adjoining building since that amount represents a fair and reasonable price for the full-time technician--the agency points out that Dover's contract, as modified to include the two buildings, is still \$1500 per month less than Precision's prior contract for similar services for the two buildings.

In response to the agency's "no cost" position, the protester argues that Dover is overcharging the agency in its \$7,700 per month price for the on-site, full-time maintenance technician at the 1100 building, and thus Dover really is not providing the 1114 building elevator maintenance services at no cost to the government. In particular, Precision suspects that an approximate 45-percent profit allowance (at approximately \$2,387) included in Dover's \$7,700 per month price is what the agency will actually be paying for Dover's services at the 1114 building.

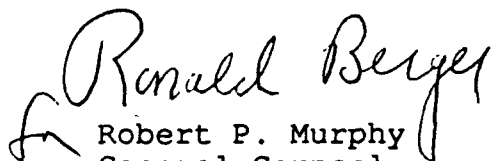
Contract modifications must be within the scope of the existing contract; a contract modification outside the scope of the contract gives rise to a sole-source contract which

³In its protest of the agency's determination to add the 1114 building elevators to Dover's contract, Precision generally challenges the agency's modification to that contract to add the full-time maintenance technician to the 1100 building on the basis that Dover was already obligated to provide the maintenance services for the 1100 building. Elsewhere in its protest, however, Precision argues that Dover's original contract was primarily for elevator modernization services, not maintenance services, so that the addition of the maintenance services to be provided in the 1114 building was improper because maintenance services were not the type of services contemplated by the original contract. The protester's arguments are contradictory and thus cannot serve as a valid basis of protest of the modification's addition of the full-time maintenance technician. We view Precision's protest, as discussed above, as a challenge to the modification's addition of the 1114 building elevator maintenance services and the agency's failure to compete the requirement.

is improper unless it can be justified as such under applicable law. See, e.g., Neal R. Gross & Co., Inc., 69 Comp. Gen. 292 (1990), 90-1 CPD ¶ 212. The fact that the agency anticipates that no other vendor can be competitive with an incumbent's price generally is not a proper justification for a sole-source award--the willingness of potential offerors to be competitive in the face of another offeror's advantage should be tested "in the crucible of competition." See ROSCO Int'l Corp., B-242879, June 12, 1991, 91-1 CPD ¶ 564; Olivetti Corp. of Am., B-187369, Feb. 28, 1977, 77-1 CPD ¶ 146. Here, however, even if the modification is outside the scope of the contract and is not justified as a proper sole-source award, the protester has not shown how it has been prejudiced by the agency's failure to compete the 1114 building maintenance services.

Prejudice is an essential element of a viable protest, and where no prejudice is shown or is otherwise evident, our Office will not sustain a protest, even if a deficiency in the procurement is evident. Colonial Storage Co.--Recon., B-253501.8, May 31, 1994, 94-1 CPD ¶ 335. Precision does not state that had the agency conducted a competition for the 1114 building services it would have submitted a no-cost bid or even a bid below the amount (approximately \$2,387 per month) it believes Dover is charging the agency. Precision does not suggest that it would have submitted a bid for the 1114 building services at any amount other than that awarded to it under its prior contract (\$4,217.22) for substantially similar services, which is significantly (more than 76 percent) higher than the amount the protester is contending the agency is actually paying Dover to perform that work. Since it is apparent that any competition between Precision and Dover would have been resolved on the basis of price and since Precision provides no basis for a conclusion that it might have been price-competitive with Dover in these circumstances, we must conclude that no competitive prejudice accrued to Precision as a result of the agency's modification of Dover's contract. We therefore deny the protest. See Fielman, S.L., B-258523.2; B-258523.3, Feb. 21, 1995, 95-1 CPD ¶ 96; ROSCO Int'l Corp., supra.

The protest is denied.


Robert P. Murphy
General Counsel